



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

TESTA, HURWITZ & THIBEAULT, LLP
HIGH STREET TOWER
125 HIGH STREET
BOSTON, MA 02110

COPY MAILED

FEB 22 2005

OFFICE OF PETITIONS

In re Application :
Kaufman, et al. :
Application No. 09/738,614 : PATENT TERM ADJUSTMENT
Filed: December 15, 2000 :
Dkt. No.: MDS-013A :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(B)," filed July 12, 2004.

The application for patent term adjustment ("PTA") under 37 C.F.R. § 1.705(b) is **GRANTED IN PART**.

The Office will adjust the PAIR screen to reflect that the Patent Term Adjustment (PTA) determination at the time of mailing of the Notice of Allowance and Issue Fee Due reflects an adjustment of 762 days. A copy of the updated PAIR screen showing the correct determination is enclosed.

Applicants request that the Determination of Patent Term Adjustment be corrected from 378 days as indicated on the Determination of Patent Term Adjustment mailed June 21, 2004 to 857 days.

A review of the application history reveals that in accordance with 37 C.F.R. §§ 1.702(a)(1) and 1.703(a)(1), an adjustment of 762 days can be attributed to the Office for failure to mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed.

The Office errantly entered July 8, 2002 as the date of reply to the Notice mailed March 19, 2001 rather than the correct date of April 16, 2001. Thus, as argued by applicants, there were delays under 37 C.F.R. § 1.704(b) attributable to applicants.

Applicants further argue that the Office failed to issue the patent within three years from the date the application was

filed in accordance with 35 U.S.C. 154(b)(1)(B) and 37 C.F.R. § 1.702(b) and request an additional adjustment of 95 days as of the date of mailing of the Notice of Allowance.

Applicants are advised that decision on applicants' request for recalculation of PTA under 37 C.F.R. § 1.703(b) is hereby held in abeyance until such time as the date of issuance of the patent is determined by the Office of Patent Publications.


Applicants are further advised to submit a letter to the Office within two months of the issuance of the patent if at the time of issuance of the patent the appropriate adjustment under 37 C.F.R. § 1.703(a) has not been accorded.

In view thereof, at the time of Notice of Allowance the application is entitled to a patent term adjustment of 762 days.

The Office acknowledges receipt of the required fee of \$200.00 for an application for patent term adjustment.

This application is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.


Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Adjustment PAIR Calculation